HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7353 OF 1999.

Maruti Anandrao Dhekane. ..Petitioner.

Versus.

1. The State of Maharashtra
(Th: Addl. Chief Secretary,
Home Deptt., Mantralya)

2. The Addl. Commissioner of
Police, Central Division, Mumbai.

3. Dy. Commissioner of Police,
(Z-IV) Mumbai. ..Respondents.

Shri. N. V. Bandiwadekar for the Petitioner.
Shri. C. R. Sonawane AGP for the Respondent -State.

CORAM: S.B.MHASE &
S.R.DONGAONKAR, JJ.

DATE : FEBRUARY 27, 2006.

(ORAL JUDGMENT (PER S.B.MHASE,J.)

1. The petitioner has approached to this Court invoking jurisdiction under Article 226 of the Constitution of India, seeking a writ of certiorari and thereby requesting this Court to quash and set aside the order passed by the respondent no. 2 on 10.3.1995 dismissing the petitioner from the service which was confirmed by the respondent No.1 in appeal on 14.10.1997. The petitioner has also challenged the order passed by the Maharashtra Administrative Tribunal, Mumbai (Hereinafter, in short referred to as

"the MAT".) on 7.5.1999 passed in Original Application No.632 of 1997 wherein both the orders were challenged by the petitioner.

2. On 1.9.1966 the petitioner was appointed as a police constable. In due course of time, the petitioner was promoted to the post of Police Head Constable in the year 1975. In or about 1981 the petitioner passed departmental examination and was selected to undergo the training for the post of PSI. In the year 1982 he was appointed as a PSI by the Commissioner of police, Mumbai. On 12.10.1993 the petitioner was served with the charge sheet containing six charges. The departmental enquiry was initiated against the petitioner.

3. Enquiry Officer submitted the report. It is to be noted that the petitioner has participated in the departmental enquiry and thereafter the finding report was prepared by the enquiry officer. The enquiry officer has recorded a finding that the petitioner is guilty of charge nos. 2, 3, 4 & 6. Finding on charge No. 1 was not given because the said charge was already deleted, since in respect of the siad charge the punishment was already inflicted upon the petitioner. Enquiry officer has recorded a finding that charge no.5 is not proved as against the

petitioner. Thereupon a show-cause notice was issued by the respondent no.2. It was replied to by the petitioner on 29.1.1995 and 3.2.1995. Thereafter order dated 15.3.1995 came to be passed whereby the petitioner was dismissed from service. After completing the formality of the departmental appeal, the petitioner has approached to the MAT by filing Original Application No. 632 of 1997. The MAT has dismissed his application by order dated 7.5.1999.

Hence the present petition.

4. Shri. Bandiwadekar, learned counsel appearing on behalf of the petitioner submitted that the order passed by the respondent no.2 is bad, illegal and requires to be set aside. According to the learned counsel, the respondent no.2 being Additional Commissioner of Police is incompetent to pass such orders. Learned counsel further submitted that only authority who could have passed the order is the Commissioner of Police, Mumbai who was his appointing authority and not the Additional Commissioner of Police, Mumbai.

5. Shri. C.R.Sonawane, learned AGP appearing on behalf of the respondents- State submitted that the argument advanced on behalf of the petitioner is misconceived. According to him as per the provisions

of law the Commissioner includes an Additional Commissioner, as such the Additional Commissioner is not subordinate authority in any respect to the Commissioner of Police. Therefore, order passed by the Additional Commissioner - respondent no.2 is proper and valid exercise of power.

6. Learned AGP further submitted that Section 2(6) of the Bombay Police Act lays down the meaning of various words which have been enumerated in the said Act. The meaning of word "Commissioner" has been provided to include a Commissioner of Police and Additional Commissioner of Police.

7. Section 7 of the said Act provides for the appointment of the Commissioner for Greater Bombay or any other area specified in the notification issued by the State Government in this behalf and published in the official gazette. It further provides that the State Government may appoint one or more additional commissioners of police for any of the areas specified in clause (a). It is further provided that the commissioner shall exercise such powers, perform such functions and duties and shall have such responsibilities and authority as are provided by or under this Act or as may otherwise be directed by the State Government by a general or special order.

8. Thus, on reading of these provisions it simply follows that the Commissioner includes an Additional Commissioner of Police. So far as the powers are concerned, there is no distinction made by the statute. If once we find that both have equal powers then there is no difficulty in interpreting and considering the Schedule -1 of the Bombay Police (Punishment and Appeals) Rules, 1956 wherein the entry No.2 from the Part-II is as follows:

Designation of the Officer having authority to punish.	Commissioner of Police, Bombay.
Rank of the Officer who can be punished.	All Officer to whom the Bombay Police (Punish ment and Appeals) Rules, 1965, are applicable.
Kind of punishment which may be imposed.	All punishments specified in Rule 3 subject to restrictions specified in Column No.4.
Restrictions (if any) subject to which the officer specified in column I is authorised to punish.	(a) Restriction laid down in clause (a) of the proviso to sub-rule (2) of rule 3. (b) Punishment of compulsory retirement, removal or dismissal shall not be inflicted by any authority lower in rank than that by which the police officer was appointed.

. On reading this entry it will be evident that the power of punishment of compulsory retirment, removal or dismissal is with the Commissioner of Police. Since the Commissioner of Police includes an Additional Commissioner of Police, the power is equally with the Additrional Commissioner of Police. We do not find any force in the submission of the learned counsel Shri. Bandiwadekar that it is the Commissioner of Police only and not the Additional Commissioner of Police who can impose the punishment of dismissal. We, therefore, reject the said submission.

9. Learned counsel Shri. Bandiwadekar then invited our attention to a finding report of the enquiry to point out that the enquiry officer has recorded a finding that charge no. 5 is not proved. Charge NO. 5 was that on 14.6.1993 the petitioner called Shri. Tony Vergees in a Sallon which was opposite to the shop of Tony Vergees and told him that the complaint had been lodged as against the petitioner and the petitioner confessed that he had received Rs.4000/- and thereby it is accepted that the amount which was extorted from Shri. Tony Vargees was apportioned by the petitioner and the representative of the IMPACT.

10. Learned counsel for the petitioner further

submitted that file went upto the Additional Commissioner of Police through the Deputy Commissioner of Police and that the Deputy Commissioner has disagreed with the finding of the Enquiry Officer. He therefore submitted that the Additonal Commissioner agreed with the Deputy Commissioner of Police and has imposed punishment of dismissal also on the count of Charge No.5, for which the enquiry Officer has already exonerated the petitioner.

11. Learned counsel relying upon AIR-1998 SC 374 in the matter of Yoginath Bagade v/s. State of Maharashtra submitted that the procedure as envisaged by the Apex Court in case of disagreement by the Disciplinary Authority with the finding of the enquiry officer, has not been followed by the Additional Commissioner of Police in the present matter. He submitted that therefore the punishment is vitiated. He further made a grievance that whatever were the observations made by the Deputy Commissioner of Police in respect of findings of the enquiry officer generally and also in respect of charge NO.5 have been accepted by Additional Commissioner of Police mechanically and on that count also the order is vitiated.

. Thus, acording to the learned counsel for the petitioner, the impugned order of dismissal stands

vitiated since the procedure to rely upon a charge for which the enquiry officer has exonerated the petitioner, relying upon the aforesaid case, has not been followed. Secondly, the findings of the Additional Commissioner have been influenced by the observations made by the Deputy Commissioner of Police.

Thus the order suffers from non application of mind.

12. It is pertinent to note that the impunged order of dismissal has been passed for charge Nos. 2, 3, 4 & 6 being proved as per the report of the enquiry officer. Only in respect of charge no.5 the enquiry officer has exonerated the petitioner. However, while imposing the punishment, the Additional Commissioner of Police has also imposed the punishment relying on charge no.5. In fact the Apex Court has held in the above referred case that:

> "a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the Enquiry Officer into the charges levelled against him but also at the stage at which those findings are considered by the Disciplinary Authority and the latter, namely, the Disciplinary Authority forms a tentative opinion that it does not agree with the findings recorded by the Enquiry Officer. If the findings recorded by the Enquiry Officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before

reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the Disciplinary Authority has proposed to disagree with the findings of the Enquiry Officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings of the Disciplinary Authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the Disciplinary Authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent upto the final stage. This right being a constitutional right of the employee cannot be taken away in any legislative enactment or Service Rule including Rules made under Article 309 of the Constitution.

13. Thus, it is revealed that whenever the Disciplinary Authority disagrees with the enquiry officer in respect of any charge for which the enquiry officer has exonerated the delinquent, it is obligatory for the Disciplinary Authority to inform tentatively the said opinion and give a hearing to the delinquent and thereafter should come to final conclusion. This

procedure has not been followed by the respondent no.2 when it dealt with the charge no.5. Therefore, the order of dismissal to the extent it is based on charge no.5 is not good. However, in our opinion this would not help the petitioner in any way. Because, the impugned order of dismissal was not passed only relying upon the finding of the charge no.5. However, it was equally based on finding on charge nos. 2, 3, 4 & 6, each of the charge was sufficient to attract the punishment of dismissal. There is no dispute over this proposition across the bar. Therefore, even though the impugned order of dismissal is held to be not proper to the extent of charge no.5, it is good and proper so far as the charge nos. 2, 3, 4 & 6 are concerned. Therefore, we find that the order is valid. Therefore, the challenge raised by the learned counsel for the petitioner to that extent fails and is hereby rejected.

14. Secondly, the challenge raised by the learned counsel is that the finding of the Disciplinary Authority are influenced by the observations made by the Deputy Commissioner of Police. We are not in agreement with this submission. We have noticed that the Tribunal has gone through the record. We have equally gone through the exercise made by the respondent no.2. The observations made by the Deputy Commissioner and which have been considered by the

respondent No.2 are on record. However, we have noticed, and we agree to that extent with MAT in observing, that the respondent no.2 has appreciated the material of the enquiry while coming to the conclusion of imposing the punishment of dismissal from service. The order does not suffer from vires of non application of mind. Therefore, this challenge also fails. Ultimately we find that the finding recorded by the MAT are just and proper and no interference is called for. We uphold those findings. We find that the petition is without any merit. It is hereby dismissed.

(S.R.DONGAONKAR, J.) **(S.B.MHASE, J.)**